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[Home](#) > Memorandum of Decision Re: Stay Relief

Thursday, July 23, 1987

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

LONE OAK PARK, a California limited partnership,

No. 1-87-00426

R.S. #87-152

[Debtor](#) .

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ORDER ON MOTION FOR RELIEF FROM STAY

The debtor is a limited partnership formed to develop a subdivision project in Napa, California. Its sole significant asset is the real property. Movants Briant and Julia Woolley are the former owners of the property who sold the property to the debtor in August of 1985 for \$315,250.00. The Woolleys received \$100,000.00 cash and a note for \$215,250.00 secured by a deed of trust to the property; the balance due on the note, now in default, is approximately \$255,000.00. The Woolleys seek relief from the stay on two grounds, lack of adequate protection and bad faith on the part of the debtor in filing its petition. From the testimony presented by the parties, the court believes and finds that the total present value of the property is approximately \$320,000.00, using a value of \$130,000.00 for the single family residence and its lot and \$190,000.00 for the remaining 16-lot development. This figure, based on appraisal testimony, squares fairly well with the selling price two years ago. The court therefore finds that the equity cushion provides the Woolleys with adequate protection for now and the immediate future. This court is very sensitive to bad faith

issues, and has in other cases not hesitated to grant relief from the [automatic stay](#) on bad faith grounds where there have been sequential filings or where the debtor is a fictitious entity formed and vested with property on the eve of foreclosure. In this case, however, the Woolleys sold the property to the debtor and the debtor paid a substantial down payment. The allegations of bad faith are therefore somewhat difficult to understand. The Woolleys rely on Matter of Little Creek Development Co. (5th Cir.1986) 779 F.2d 1068, but that reliance seems misplaced. Firstly, in that case the Court of Appeals reversed the lower courts' grant of relief on bad faith grounds, so that the examples of bad faith contained in the opinion are purely dicta. Secondly, even applying the dicta does not mandate the relief sought. While the debtor's project is certainly distressed, there is no evidence upon which the court can base a finding that there is no hope of rehabilitation. In this circuit at least, a valid [plan](#) of reorganization may consist of the sale of the debtor's real property, even if it is the debtor's sole asset. In re Del Rio Development, Inc. (9th Cir.BAP 1983) 35 B.R. 127, 128. The court accordingly declines to grant relief on bad faith grounds. While the court has found some equity in the property, it is not sufficient equity to hold the Woolleys at bay forever. Interest continues to accrue on their note, and they will be subject to significant commissions and other expenses if they again become the owners of the property through foreclosure. The automatic stay will therefore be modified effective January 1, 1988, to allow the Woolleys to proceed with their foreclosure unless their rights are otherwise modified by the terms of a confirmed plan before that date. IT IS SO ORDERED.

Dated: July 23, 1987

ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#)

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